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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 208

UNIVERSAL BUILDERS, INC., ROSEWOOD CORPORATION, HAMILTON CORPORATION, LAWSON CORPORATION, INDEPENDENCE HOMES, INC., JARVIS HOMES, INC., CHATHAM TOWN HOMES, INC., and EARCHMONT HOME DEVELOPMENT CO.,

Petitioners,

vs.

SIDNEY and JULIA CLARK, REV. ROBERT ANDERSON, JR., DEE BALLANFANT, EDWARD and FREDDIE MAE BROWN, CLARANCE and MARY ANN CARR, ARTHUR and THELMA GREEN, CHARLES and CLEORIA HARDY, BESSIE HENDERSON, JOHN and WILLIE M. JACKSON, GREAD and NAOMI D. McKINNIS, JULIA W. MONTGOMERY, HARRY C. and MATTIE B. PELTON, JAMES and WILLIE PHELPS, ERNEST and SHIRLEY T. POWELL, JR., MRS. JOHNNIE RAMSEY, JOSEPH L. and BEVERLY THOMPSON, and WILLIAM and RUBY YOUNGBLOOD, on their own behalf and on behalf of all others similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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OCTOBER TERM, 1969.

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UNIVERSAL BUILDERS, INC., ROSEWOOD CORPORATION, HAMILTON CORPORATION, LAWSON CORPORATION, INDEPENDENCE HOMES, INC., JARVIS HOMES, INC., CHATHAM TOWN HOMES, INC., and LARCHMONT HOME DEVELOPMENT CO.,

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Universal Builders, Inc., Rosewood Corporation, Hamilton Corporation, Lawson Corporation, Independence Homes, Inc., Jarvis Homes, Inc., Chatham Town Homes, Inc., and Larchmont Home Development Co. petition for a writ of certiorari to review the decision of the United

States Court of Appeals for the Seventh Circuit entered on January 6, 1970.

OPINIONS BELOW.

The District Court did not file a written opinion, but stated orally that his applicable reasoning could be found in a written decision in another case, then known as *Contract Buyers League, et al.* v. *F & F Investment, et al.*, reported at 300 F. Supp. 210 and reprinted in full as Appendix A to this petition. The opinion of the Seventh Circuit is reported at 420 F. 2d 1191, and reprinted in full as Appendix B to this petition. A three-judge court, convened pursuant to 28 U. S. C. § 2281, rendered an unreported opinion on another aspect of this litigation, which is reprinted in full as Appendix C to this petition.[1] The Appendices are separately presented.

THIS COURT'S JURISDICTION.

The judgment of the Seventh Circuit was entered on January 6, 1970. With one judge dissenting, petitioners' petition for rehearing was denied by order entered on March 5, 1970. This Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

This is a civil rights action involving petitioners' sales of new single family homes on credit to Negroes. The Seventh Circuit's decision was rendered on interlocutory appeal

1. Other litigation between some of these parties was previously before this Court in *Durham et ux* v. *Independence Homes, Inc.*, No. 1062, Oct. Term 1969, appeal dismissed and cert. denied, ... U. S. ....., 25 L. Ed. 2d 78 (1970); appellee there is one of the petitioners here, and appellants there are two of the respondents here.

on statute of limitations issues. Petitioners wish to present the following question for review by this Court:

Whether the Seventh Circuit correctly held that a cause of action for alleged discrimination in the price and terms of a long-term contract to purchase real property does not accrue when the contract is signed, but only when it is fully performed—32 years later in some instances.

STATUTES INVOLVED.

(a) Illinois Limitations Act, L. 1871-2, p. 556, Section 15, as amended; 1969 Ill. Rev. Stats., Ch. 83, Par. 16:

> "Except as provided in Section 2-725 of the 'Uniform Commercial Code,' approved July 31, 1961, as amended, and Section 11-13 of 'The Illinois Public Aid Code,' approved April 11, 1967, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and *all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued.*" (Emphasis supplied).

(b) Civil Rights Act of 1866, 14 Stat. 27, Section 1; 42 U. S. C. § 1982:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

STATEMENT OF THE CASE.

(a) The Parties.

Since January, 1958 petitioner Universal Builders, Inc., built, and the other seven petitioners sold, approximately 1,300 all brick, new, three and four-bedroom single family homes on the far South Side of Chicago (A. 10, 26-27).[2] Many have luxury features such as finished recreation rooms, central air conditioning and built-in intercom systems. While a majority of the sales were made under installment contracts for deed providing for a specified down payment with the balance of the purchase price payable in monthly installments over a period of years, petitioners also sold these houses for cash to customers who had obtained financing from third persons.

The respondents are members of a class consisting of Negroes who purchased these homes pursuant to installment contracts for deed, on which at least one monthly payment was made since January 20, 1964 (five years prior to the filing of this suit). The District Court ruled that this is a proper class action under Rule 23, Federal Rules of Civil Procedure, and simultaneously ruled on petitioners' statute of limitations motion by defining the class to exclude petitioners' Negro customers whose contracts with petitioners were not in force at any time during the five years immediately preceding the filing of the complaint (A. 76-77).

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2. Record references herein will be made as follows. Pages of the printed Appendix filed in the Seventh Circuit will be designated by the prefix "A." Material in the record on appeal certified to the Seventh Circuit by the District Court but not reproduced in the Appendix will be designated by the prefix "R.", followed by the page reference.

(b) The Installment Contracts.

Specimen copies of the installment contracts in the record (R. 98-145, 150-153; A. 22-25, 28-35) disclose that petitioners agreed to construct and sell new houses for prices ranging from $22,450 to $29,400, with down payments of about 10%, and with the balance of the purchase price payable in specified monthly installments (as low as $139) "or more"[3] to be applied first to interest on the balance outstanding each month at annual rates of 6½% to 7% (simple), and then to principal. A buyer making only the minimum payments required by his contract would amortize the deferred balance of the purchase price in 23 to 32 years. The installment contracts also require the buyers to make monthly deposits for real estate taxes and hazard insurance premiums[4] and to pay any assessments made against the property.

Petitioners' contract customers do not obtain legal title until the purchase price has been paid in full.[5] Under the contracts, a buyer later desiring to do so may, at any time, exercise the unlimited prepayment privilege without penalty, pay petitioners the outstanding balance of the purchase price, and thus terminate the contract and obtain title to the property. To date, the purchasers of approximately 350 of the houses which petitioners originally sold on contract have exercised their prepayment privilege to termi-

3. The quoted words confer upon the buyer an unlimited privilege to prepay, in whole or in part, at any time without penalty.

4. Each buyer is required by Paragraph 5 of his contract to insure the property for at least the unpaid principal balance. *E.g.*, A. 29.

5. The buyer may not record his interest until one-third of the purchase price has been paid, may not repair, alter or improve the property without the seller's consent, and may not transfer or assign his interest in the property or in the contract itself without the consent of the seller which may not unreasonably be withheld. *E.g.*, A. 29.

nate their contracts by paying the principal balance, and title has been conveyed to them (an affidavit appearing at A. 26-27 refers to 300 such prepayments, and approximately 50 additional prepayments have been made since that affidavit was filed).

The seller's remedies for a default of a buyer which persists for 30 days include the right to terminate the contract. The procedure for retaking the property after such contract termination, is established by the Illinois Forcible Entry and Detainer Act, R. S. 1874, p. 535; 1969 Ill. Rev. Stats., Ch. 57, § 1 et seq. The Act requires that the trial court stay issuance of the writ of restitution in all cases, with a six-month stay mandatory in some cases. While the writ is stayed, a defaulting buyer may cure any defaults and thereby reinstate his contract as if no default had occurred. 1969 Ill. Rev. Stats., Ch. 57, § 13.

(c) Use of Installment Contracts in Illinois.

Real property has been sold in Illinois under such contracts by owners willing to accept payment in installments for at least 96 years. When first enacted in 1874, the Illinois Forcible Entry and Detainer Act expressly recognized this method of buying and selling real property and conferred upon a contract seller the right to maintain an action for possession against a defaulting contract buyer. That provision remains in the Act today. 1969 Ill. Rev. Stats., Ch. 57, § 2 (Fifth). The continued widespread use of such contracts was observed by the Supreme Court of Illinois in 1962 when it said "[i]t is a matter of common knowledge . . . that contracts for deed are useful to and increasingly used in our society." *Shay* v. *Penrose*, 25 Ill. 2d 447, 450-51, 185 N. E. 2d 218 (1962).

(d) The "Cause of Action" Alleged.

The complaint in this case was filed on January 20, 1969 (R. 2-49) in the United States District Court for the Northern District of Illinois, by the named plaintiffs in their own behalf and as representatives of the class.[6]

The complaint alleges that petitioners sold houses to the plaintiff class members under contracts for deed at higher prices and on less favorable terms and conditions than "would have been available" to white persons (A. 11, 10) in violation of 42 U. S. C. §§ 1981, 1982, 1983 and 1985(3), and the Thirteenth and Fourteenth Amendments to the United States Constitution.[7] The jurisdiction of the District Court was invoked under 28 U. S. C. § 1343 (A. 4).

Notwithstanding the absence of any allegation that any of the petitioners had actually refused to deal with anyone because of race,[8] or had actually offered to sell or sold for any different prices or on any different terms and conditions to anyone because of race, the District Court denied a motion to dismiss the civil rights claim (R. 50-51), holding that the complaint stated a claim under 42 U. S. C. § 1982 and considered it unnecessary to decide whether claims were also stated under the Thirteenth and Fourteenth Amendments and under 42 U. S. C. §§ 1981, 1983 and

6. An unincorporated voluntary association known as Contract Buyers League was also named as a plaintiff and was dismissed as a party on petitioners' motion. A. 76; App. A at A35-A39; 300 F. Supp. at 230-232.

7. The complaint also charged violation of the federal securities laws and fraud, unconscionability and usury in violation of Illinois law (R. 27-38) which other charges were dismissed on petitioners' motion. A. 76; App. A at A22-A33; 300 F. Supp. at 223-229.

8. Petitioners do not dispute that they sold most of their houses to Negroes. However, petitioners in fact also sold to whites for the same prices and on the same terms.

1985(3)[9] (A. 76; App. A at A3-A8; 300 F. Supp. at 214-216).

(e) Proceedings Below on Statute of Limitations Issue.

Petitioners also moved to dismiss the claim of each plaintiff whose contract was signed more than five years before the complaint was filed (A. 26), on the ground that each such plaintiff's civil rights were violated, if at all, when each contract was signed and that all claims that said contracts violated plaintiffs' civil rights are barred by the controlling provision of the Illinois Limitations Act, L. 1871-2, p. 556, Sec. 15; 1969 Ill. Rev. Stats., Ch. 83, Par. 16:

> "... all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued."

The District Court correctly held that civil rights claims are governed by the Illinois five-year statute of limitations, but then ignored the requirement of the statute that the action must be commenced within five years after the cause "accrued" and held that the only persons barred by limitations are those whose contracts terminated more than five years before the complaint was filed. A. 76-77; App. A at A12-A22; 300 F. Supp. at 218-223. It was, and is petitioners' position that, if the civil rights of any member of the class were violated by contracting to sell a home to him for a "discriminatory" price or on "discriminatory"

9. Because this is an interlocutory appeal limited to statute of limitations issues, the issue whether the complaint states a claim for which relief may be granted was not before the Seventh Circuit. This petition will sometimes refer to the allegations of higher prices and less favorable terms and conditions than "would have been available" to white persons as alleged discriminatory prices and terms, but petitioners do not thereby concede and in fact deny that the complaint alleges a civil rights violation.

terms,[10] such violation occurred and the cause of action "accrued" when the contract of sale was signed because that event established and obligated the purchaser to pay the allegedly "discriminatory" price and bound him to the other allegedly "discriminatory" terms and conditions, that the action now before the Court could then have been commenced, and that whether or not a contract has been terminated is immaterial in deciding when limitations began to run against the claim that its provisions were "discriminatory".

The District Court made the findings required by 28 U. S. C. § 1292(b) for an interlocutory appeal on the limitations issues *only* (*A.* 77), and thereafter, by orders entered on June 24, 1969, the Seventh Circuit granted leave to all parties to prosecute interlocutory appeals on such issues. All parties in the separately pending case of *Baker, et al.* v. *F & F Investment, et al.*, were granted leave to prosecute interlocutory appeals on the limitations questions there presented,[11] and all such appeals were consolidated by the Seventh Circuit for purposes of briefing, argument and decision.

The Seventh Circuit correctly ruled against respondents on all of the points raised by their cross appeal and correctly affirmed the holding of the District Court that the claim under 42 U. S. C. § 1982 (the only claim the trial court let stand against these petitioners)[12] is governed by

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10. Petitioners' answer denies that they in fact sold for "discriminatory" prices and on "discriminatory" terms and conditions, and the matter has not yet been tried.

11. The *Baker* case involved the same limitations questions as the instant case and, in addition, involved questions under the federal and Illinois statutes of limitations applicable to the federal and state antitrust claims asserted there but not here.

12. In *Baker, et al.* v. *F. & F. Investment, et al.*, not involving these petitioners, the trial court left standing claims of federal and state antitrust violations.

the five-year limitation contained in Section 15 of the Illinois Limitations Act (App. B at A42-A54; 420 F. 2d at 1193-1199), but erroneously sustained the trial court's holding that the statute of limitations does ". . . *Not Begin to Run Until Each Contract Terminates.*" App. B at A54-A55; 420 F. 2d at 1200 (emphasis in original).

This decision nullifies the statutory language that limitations begins when ". . . the cause of action accrued", judicially tolls the statute on all civil rights violations which may result from the execution of long-term contracts for the entire life of the contracts, and, under a five-year statute of limitations, subjects these petitioners to suits for as long as 37 years after the contracts were executed even though such suits could have been brought the very day they were signed.[13]

Under the Seventh Circuit's decision, the time during which one is obligated to bring a civil rights action or be barred is not measured as the statute and decisions of this and other Courts hold it should be measured, from the date when the suit could have been brought, but depends upon whether the alleged discriminator extended long-term credit to the purchaser or sold for cash.

Petitioners' customers who bought the same model home in the same neighborhood at the same time and for the same price as respondents five or more years before this suit was filed, are by this decision now barred by limitations if they paid petitioners cash. On the other hand,

13. Petitioners' apprehension of such suits up to 37 years after contracts were signed is not mere speculation. The extent of participation in this class action has not yet been finally determined, but class action notices were mailed to 1,262 of petitioners' customers, and, as of March 18, 1970, only 188 had definitely elected to participate. Any or all of the other 1,074 customers may elect not to participate now (197 have already so elected), and later make the same charges as are now made, any time within the governing limitations period, which the Seventh Circuit held to be the entire life of each purchase contract plus an additional five years.

none of petitioners' customers under the hundreds of installment contracts still outstanding are barred no matter when the contracts were executed. The illogical result of this holding is further brought into focus by the fact that any contract purchaser electing not to participate in this class action may later sue petitioners at any time within 5 years after his contract is fully amortized—in some cases more than 30 years hence. Yet all of these customers, those who purchased for cash, those who purchased under existing contracts and remain members of the present class, and those who purchased under existing contracts but have or in the future elect not to remain members of this class and sue at a later date—perhaps 30 years from now—suffered the very same alleged "discrimination" on the very same day.

REASONS FOR GRANTING THE WRIT.

I.

The Seventh Circuit's Decision Conflicts With the Applicable Decisions of This Court and Illinois Courts; It Reaches Precisely the Result Which This Court Has Repeatedly Stated Statutes of Limitations Are Designed and Should Be Construed to Prevent.

The controlling statute of limitations began to run, by virtue of the express language of that statute, when "the cause of action accrued." The Seventh Circuit's decision ignored this statutory designation of the starting point for computing the period of limitations and the decisions interpreting it, and held that limitations does ". . . Not Begin to Run Until Each Contract Terminates." App. B at A54; 420 F. 2d at 1200. The result is a decision in direct conflict with a long line of decisions of both this Court and the Illinois courts holding that a cause of action accrues when one who sustains injury from an invasion of his rights may

first maintain an action against the alleged wrong doer. *Mazur* v. *Stein*, 314 Ill. App. 529, 534, 41 N. E. 2d 979 (1st Dist. 1942); *Golden* v. *Cervenka*, 278 Ill. 409, 116 N. E. 273 (1917); *McGuigan* v. *Rolfe*, 80 Ill. App. 256 (1st Dist. 1899); see *United States* v. *Atlantic Mutual Ins. Co.*, 298 U. S. 483, 488-490 (1936); *cf.*, *Crown Coat Front Co.* v. *United States*, 386 U. S. 503 (1967).

In *United States ex rel. Louisville Cement Co.* v. *Interstate Commerce Commission*, 246 U. S. 638 (1918), this Court said:

> "And in this connection we cannot fail to recognize that when the statute was enacted *the time when a cause of action accrues had been settled by repeated decisions of this court to be when a suit may first be legally instituted upon it* (Amy v. Dubuque, 98 U. S. 470, 474, 25 L. ed. 228, 230; United States v. Taylor, 104 U. S. 216, 222, 26 L. ed. 721, 723; Rice v. United States, 122 U. S. 611, 617, 30 L. ed. 793, 794, 7 Sup. Ct. Rep. 1397)...." 246 U. S. at 644 (emphasis supplied).

This Court has also said:

> "In common parlance a right accrues when it comes into existence...." *United States* v. *Lindsay*, 346 U. S. 568, 569 (1954).
>
> "... We conclude that 'the cause of action accrued,' within the meaning of § 6 of the Portal-to-Portal Act, when the minors were employed. That was the violation of the Walsh-Healy Act, giving rise to the liability for liquidated damages.... *A cause of action is created when there is a breach of duty owed the plaintiff.*" *Unexcelled Chemical Corp.* v. *United States*, 345 U. S. 59, 65 (1953, emphasis supplied).
>
> "*When might this action have been instituted?* is the question, for from that time the statute must run." *Wilcox* v. *Plummer*, 4 Pet. 172, 180 (1830, emphasis supplied).

Under these decisions the "cause of action" alleged in the complaint accrued as to each respondent when he signed his contract because it was at that time, if ever, that the discrimination occurred. It was then that he agreed to pay the "discriminatory" price and to be bound by the "discriminatory" terms of the contract, and at that time he could *first* have brought the very action now asserted in the complaint. All of the relief requested now—rescission, reformation, accounting, actual and punitive damages (A. 19-20)—was available then if it is available now. Hence, it was then and not when a contract terminates that the alleged "cause of action accrued."

Instead of focusing on the gist of the complaint—the charge that the contracts obligated respondents to pay "discriminatory" prices—and the controlling language of the statute in question, the court below mistakenly dwelled upon the fact that the alleged "discriminatory" prices were payable in installments, the receipt of which it variously described as "reaping the unlawful benefit through continued enforcement," "wrongs committed by defendants which continue during the entire lives of the individual purchase contracts," "continuing relationships," "a prolonged and continued invasion of the rights of the purchasers," "the continuing nature of the overt acts alleged," and "on-going relationship . . ." App. B at A54-A55; 420 F. 2d at 1199-1200.

The Seventh Circuit thus attributed a plainly improper significance to the fact that the alleged "discriminatory" price was payable in monthly installments, erroneously concluding that the time when the price is fully paid and the contract is thus terminated, rather than the time when a suit first could have been brought, marks the beginning of the period of limitations. But when a contract is terminated clearly has nothing to do with whether or not the

contract required payment of a discriminatory price. This discrimination could have occurred, if it ever occurred, only when a contract was signed, and it was then that this action could *first* have been brought, so it was then that the "cause of action accrued" and limitations began to run.[14]

That petitioners have enforced the provisions of the contracts, and collected money due, whether by prepayment or by monthly payment, and will continue to do so in the future—in some cases for 30 or more years—in no way affects the time when limitations began to run, for it has been consistently held that a cause of action for obtaining an injurious provision accrues when the contract is executed and that limitations run against such a cause from that time without regard to subsequent contract performance. *E.g., Steiner* v. *Twentieth Century-Fox Film Corp.*, 232 F. 2d 190 (9th Cir. 1956); *Fleischer* v. *A. A. P. Inc.*, 180 F. Supp. 717, 723 (S. D. N. Y. 1959); *Berry* v. *Chrysler Corp.*, 150 F. 2d 1002 (6th Cir. 1945); *Skouras Theatres Corp.* v. *Radio-Keith-Orpheum Corp.*, 193 F. Supp. 401, 406 (S. D. N. Y. 1961). The Supreme Court of Illinois has specifically held that payments made pursuant to an injurious contract do not affect the time of accrual of a cause of action for a wrong committed when the contract was

14. The two decisions upon which the Seventh Circuit relied, *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U. S. 481 (1968), and *Hazeltine Research, Inc.* v. *Zenith Radio Corp.*, 418 F. 2d 21 (7th Cir. 1969), cert. granted, ... U. S. ....., 25 L. Ed. 2d 390 (1970), in reaching its erroneous conclusion are clearly distinguishable. Unlike those cases in which injury was caused by an antitrust violation committed during the limitations period, any "discrimination" committed against a respondent here occurred, if at all, when his contract was executed and not thereafter. Thus, the distinction specifically noted by this Court in *Hanover Shoe, supra,* is applicable. 392 U. S., n. 15 at 502.

signed.[15] *Keithley* v. *Mutual Life Ins. Co.*, 271 Ill. 584, 599-600, 111 N. E. 503 (1916).

In deciding that the statute of limitations does "... Not Begin to Run Until Each Contract Terminates" (even though the courts below did not dismiss as to those members of the class whose cause of action had not "accrued", under the decisions below, because their contracts had not terminated), the Seventh Circuit not only ignored, but indeed it defied, the mandate of the applicable statute and rendered an opinion contrary to and in direct conflict with the applicable decisions of this Court and other courts as to when a "cause of action accrued."

For this reason, review by this Court is required.

In addition, by permitting actions to be brought against petitioners as late as 37 years after the alleged wrong was committed, this decision subverts and virtually destroys the very purpose of the statute of limitations.[16] It flies in the teeth of this Court's repeated holdings that statutes of limitations are to be liberally construed in favor of repose and stability of transactions and not, as the Seventh Circuit held, in such a manner as to impose liability for acts done decades beyond the statutory period.

> "... Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. ... For these reasons and others, we have stated

15. The only thing of which respondents complain after date of execution of each contract, other than contract performance, is alleged failure to pay or credit respondents' accounts with the proceeds of insurance claims (A. 14). Even if this were true (and it is denied), it would not be a violation of 42 U. S. C. § 1982, and certainly termination of a contract would not have to occur before a respondent could bring suit for this alleged wrongdoing.

16. By the Seventh Circuit's reasoning, a civil rights action attacking an allegedly discriminatory 99 year lease could be brought 104 years after execution of the lease.

before 'the principle that criminal limitations statutes are "to be liberally interpreted in favor of repose." ' ... These principles indicate that the doctrine of continuing offenses should only be applied in limited circumstances since, as the Court of Appeals correctly observed in this case, '[t]he tension between the purpose of a statute of limitations and the continuing offense doctrine is apparent; the latter, for all practical purposes, extends the statute beyond its stated term.' " *Toussie* v. *United States*, ... U. S. ....., 25 L. Ed. 2d 156, 161 (1970).

The principles thus stated by this Court this very year in a criminal case have long been equally applicable to civil actions.

"The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court . . . as a meritorious defense, in itself serving a public interest." *Guaranty Trust Co. of N. Y.* v. *United States*, 304 U. S. 126, 136 (1938).

"[I]t is a cardinal principle of modern law and of this court, that [statutes of limitations] are to be treated as statutes of repose, and are not to be construed so as to defeat their obvious interest to secure the prompt enforcement of claims during the lives of the witnesses, and when their recollection may be presumed to be still unimpaired." *Campbell* v. *City of Haverhill*, 155 U. S. 610, 617 (1895).

"Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation." *Wood* v. *Carpenter*, 101 U. S. 135, 25 L. ed. 807, 808 (1879).

Petitioners are not advancing a theoretical argument by stating their serious concern that memories may have faded and important witnesses may be missing or dead when they attempt to defend themselves now, under the decision below, against a complaint alleging "discrimination" which occurred, if at all, as long as twelve years before the complaint was filed. Nor do petitioners exaggerate their even more serious concern for their ability to adequately defend themselves against such allegations which, under the decision below, may be made for the next 35 years[17] and then reach back 37 years into the past.

One of petitioner's former officers who had some operating responsibilities is now deceased. While petitioners' two principal operating officers are now in the "prime of life," the *younger* will be 76 years old when petitioners are finally free from the exposure imposed by the Seventh Circuit, and the other will be in his nineties. Moreover, approximately 20% to 25% of petitioners' 1,300 houses were sold to buyers who were represented by counsel, and, to the best of petitioners' knowledge, *all* of those transactions more than five years before the complaint was filed were handled by and certain provisions in the contract negotiated for petitioners by their former attorney who is now deceased. The purpose of a statute of limitations is to secure the prompt enforcement of claims while witnesses are alive and their recollections unimpaired, and the decision of the Seventh Circuit is at war with the precept, repeatedly stated by this Court, that statutes of limitations should be favorably viewed and applied to effectuate repose and stability of past transactions.

For this reason, too, review by this Court is required.

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17. As recently as 1968, petitioners were entering into installment contracts with amortization periods of up to 32 years, and their exposure under the decision below will end five years after the last contract is amortized. In addition to this class action, petitioners face possible future actions by the purchasers of 1,074 homes, see Note 13, *supra*.

II.

The Decision Below Has Far-Reaching Implications for Other Civil Rights Litigation, Imposes a Harsh Penalty for Extending Credit for the Purchase of Property, and May Cause Serious Economic Consequences.

The Seventh Circuit in this case rendered the first decision (except that of the District Court) to consider the effect of long-term credit upon the statute of limitations applicable to a civil rights action for an allegedly "discriminatory" sale of property.

It is a matter of common knowledge that long-term credit is involved in practically every purchase and sale of a personal residence and the decision below may become authority for the maintenance of additional suits under 42 U. S. C. § 1982, both now and in the distant future against all in this country who sold to non-whites on credit, even though such sales occurred decades in the past. And this is equally true of credit in any form—an installment contract for deed as in the case at bar, a purchase money mortgage, a deed of trust, or any other arrangement. Anyone who extended credit, as did these petitioners, established a "continuing relationship" upon which the court below so strongly relied; anyone who receives periodic payments, as do these petitioners, during the duration of the credit arrangement, is "reaping the * * * benefit" alluded to by the Seventh Circuit as bearing upon the time when limitations begins to run. The prevalence of seller-provided financing of real property transactions in Illinois (see *Shay* v. *Penrose*, *supra*) indicates that a vast number of past transactions in Illinois may now be challenged under the authority of the Seventh Circuit's decision. The past use of contracts for deeds and purchase money mortgages throughout the entire United States creates the

possibility of so substantial an amount of litigation under 42 U. S. C. § 1982 as to give this question national importance.

Moreover, the Seventh Circuit's decision is applicable to future transactions in a manner threatening serious and far-reaching consequences, for the reasoning employed by the Seventh Circuit will be equally applicable not only to charges of violation of 42 U. S. C. § 1982, but in all future actions charging that a sale on credit violated the Fair Housing Title (Title VIII) of the Civil Rights Act of 1968, 42 U. S. C. § 3604, and in all future actions charging that a loan itself violated the 1968 Act, 42 U. S. C. § 3605. Whenever a sale on credit or a loan is challenged under the 1968 Act, the very same reasoning which the Seventh Circuit used here to sweep aside the controlling five-year limitations period could also sweep aside the six-month period Congress provided in the 1968 Act:

> ". . . A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred. . . ." 42 U. S. C. § 3612(a).

Accordingly, the Seventh Circuit's decision can only have a chilling effect upon the willingness of the private sector to provide funds for financing real estate purchases, at the very time when there is already a shortage of such funds of near-crisis proportions. The prospect of facing civil rights suits for 25 years or more if one deals with a non-white on long-term credit will hardly be an inducement to engage in such transactions.

Many individuals, because of the scarcity of money, are now able to sell their own homes, perhaps their most sub-

stantial asset, only by themselves extending the credit almost all buyers require. The Seventh Circuit's decision, if permitted to stand, will mean that these individuals may sell to non-whites only for cash or by assuming exposure of intolerable duration to a civil rights suit under 42 U. S. C, § 1982. And the builders who themselves extend long-term credit to their customers, either through contracts of the type here involved, or through the use of purchase money mortgages, may elect to invest their capital in other ways rather than to assume decades of civil rights exposure for each sale on credit. As a result, housing starts may drop even farther than they have already dropped, and at a time when this nation faces the most serious housing shortage in its existence.

Obviously, the petitioners cannot speak for others. As for themselves, they started building in 1958 and since have built 1,300 brand new homes, most of which they sold on long-term credit to Negroes. They no longer are building homes.

For these reasons, too, review by this Court is required.

CONCLUSION.

Petitioners pray that this petition be granted.

Respectfully submitted,

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